

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM  
EXECUTIVE SUMMARY FOR  
WATER QUALITY STANDARDS ADMENDMENTS**

**AGENDA #III.B.2.**

**AGENDA ITEM SUMMARY**

The department requests that the Board approve its proposal to initiate rulemaking to repeal the Temporary Water Quality Standards for the Upper Blackfoot Mining Complex ARM 17.30.630(2).

**LIST OF AFFECTED RULES**

ARM 17.30.630(2)

**AFFECTED PARTIES SUMMARY**

The proposed will affect Asarco and other persons that may be responsible for exceedance of water quality standards in portions of Mike Horse Creek, Beartrap Creek and upper Blackfoot River that now have Temporary Water Quality Standards. The existing MPDES permit held by Asarco will also be affected

**SCOPE OF PROPOSED PROCEEDING**

The Department requests that the Board initiate rulemaking to repeal ARM 17.30.630(2) and assign a hearings officer to preside over a public hearing.

**BACKGROUND**

The board is proposing to amend ARM 17.30.630 to remove the temporary water quality standards for Cadmium, Copper, Iron, Lead, Manganese, Zinc and pH that were adopted in 2000 for portions of Mike Horse Creek, Beartrap Creek, and the upper Blackfoot River and were to remain in effect for eight years. If the temporary water quality standards for these streams are rescinded as proposed, the specific water quality standards in ARM 17.30.623 for streams classified B-1 will once again apply to these waters.

Temporary water quality standards may be adopted for specific parameters that are causing a water body not to support one or more of its designated uses. The temporary water quality standards may be statistically based on ambient conditions and, as in this case, can be several orders of magnitude greater than the standards that otherwise would apply. The purpose of the temporary water quality standards is to allow the petitioner to develop and implement a cleanup plan and a schedule of activities with the intent to have the waterbody support its designated uses within the timeframe of the temporary standards.

As a condition of temporary standards adoption, the person who requests them must submit a cleanup plan that is designed to improve the water quality so that the water body supports its designated uses. The board is proposing this amendment to rescind the temporary water quality standards for portions of Mike Horse Creek, Beartrap Creek, and the upper Blackfoot River because of inadequate progress in meeting the goals in the implementation plan and not meeting milestones that served as a basis for adopting the temporary standards. Due to this lack of progress, the board is proposing to terminate the temporary standards as expressly authorized under 75-5-312(11), MCA. Alternatively, the board could modify the implementation plan and schedule if there were "convincing evidence" that the plan needs modification. 75-5-312(12), MCA. Since there is no evidence that a modified plan would assure continued progress in implementing the plan, the board is proposing to terminate the temporary standards and return the streams to the former standards for B-1 streams.

The lack of progress that has prompted the board's proposal to terminate the temporary standards is not limited to one failure, but consists of many. For example, there has been a chronic failure to submit the annual  
C:\Documents and Settings\CB5691\Local Settings\Temporary Internet  
Files\OLK63\ExSumTempWQStdsUBF.doc

data summary report and annual work plan on time. In addition, numerous reclamation activities have not been completed according to the implementation plan's schedule. The activities that have not been completed in a timely fashion include: (1) the mine waste reclamation plan and removal for the Lower Mike Horse Creek (scheduled for completion in 2003); (2) the dispersed floodplain tailings reclamation plan and removal for the Beartrap Creek drainage (scheduled for completion in 2004); (3) the mine waste and possible adit discharge reclamation plan and removal on the Flosse and Louise patented claim (scheduled for completion in 2004); (4) the concentrated tailings reclamation plan and removal for the Upper Blackfoot River drainage near the confluence with Shave Creek (scheduled for completion in 2005); (5) the dispersed floodplain tailings reclamation plan and removal for the Upper Blackfoot River drainage (scheduled for completion in 2005); and (6) Stevens Gulch reclamation plan (scheduled for completion in 2006).

### **Hearing Information**

The Department requests the Board appoint a hearings officer to conduct a public hearing on a date set by the Board if rulemaking is initiated.

### **BOARD OPTIONS**

The Board may:

1. Authorize the Department to initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules,
2. Modify the Notice of Proposed Amendment of Rules and initiate rulemaking thereafter; or
3. Deny the Department's request to initiate rulemaking.

### **DEQ RECOMMENDATION**

The Department recommends that the Board grant the Department's request to initiate rulemaking, and schedule a hearing.

### **ENCLOSURES**

The following information is attached to this summary:

- 1) Proposed rule changes.